

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TRUSTEES OF THE LOCAL 348-2 HEALTH
AND WELFARE FUND, et al.

Plaintiffs,

- v -

CHLOE FOODS CORP.,

Defendant.

REPORT AND RECOMMENDATION

CV-08-300 (DLI) (VVP)

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I respectfully recommend that this action be dismissed. The parties advised the court by letter dated September 2, 2008 that the matter had been settled and would be dismissed once full compliance with the payment terms of the settlement agreement had been achieved. According to the schedule of payments annexed to the letter, the final payment was to have been made by December 31, 2008. Since that time, counsel have advised chambers telephonically that a stipulation of dismissal would be filed, but they have not done so. On March 2, 2009, an order was issued requiring the plaintiffs' counsel to provide the court with a status report within twenty days. No status report has been filed in response to the order. As it appears that the case has been resolved, but that counsel have simply failed to file the necessary stipulation, the case should be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

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Any objections to the Report and Recommendation above must be filed with the Clerk of the Court within 10 days of receipt of this report. Failure to file objections within the specified time waives the right to appeal any judgment or order entered by the District Court in reliance on this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see, e.g., Thomas v. Arn*, 474 U.S. 140, 155, 106 S.Ct. 466, 474, 88 L.Ed.2d 435 (1985); *IUE AFL-CIO*

Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993); *Frank v. Johnson*, 968 F.2d 298 (2d Cir.), *cert. denied*, 113 S. Ct. 825 (1992); *Small v. Secretary of Health and Human Serv.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam).

Viktor V. Pohorelsky
VIKTOR V. POHORELSKY
United States Magistrate Judge

Dated: Brooklyn, New York
March 24, 2009